U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: OCT 15 2013 OFFICE: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the AAO on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a mathematician. At the time he filed the petition, the petitioner was a postdoctoral research associate at the The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel and copies of previously submitted exhibits.[1]

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by

[1] The appeal includes a letter from Prof. dated April 2, 2013. Review of the body of the letter shows it to be identical to a previously submitted letter dated August 30, 2012. The re-dated letter is not, in effect, a new exhibit.

increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, P.L. 101-649, 104 Stat. 4978 (Nov. 29, 1990), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The term "prospective" is included here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on September 6, 2012. In an accompanying statement, the petitioner described his work:

> My primary research interest is Applied and Computational Mathematics, in particular, the area of numerical solutions to partial differential equations. My research focuses on four main directions: (1) Developing robust higher dimensional

> adaptive grid methods for finding efficient and accurate numerical solutions for time-dependent partial differential equations. These equations arise in a wide range of important applications such as the modeling of combustion in chemicals and the heat transfer. (2) Dynamical systems techniques to study and analyze ocean transport and mixing. (3) Optimal mass transport; a classical problem that has important new applications in engineering, science and economics. (4) Medical Image Analysis. In my Ph.D. dissertation, I have developed new methods for medical image registration, the process of aligning two or more images. . . . The newly developed methods have been tested for several sample images as well as for real 2D and 3D medical images. The numerical results show that the methods are both effective and reliable. . . .
>
> As a full-time Research Scientist, I have been working with Dr. 's research group in the School of Marine Science and Policy at [the] since May 2011 to present. I was hired through an international open competition to work in a that is funded by the Department of Defense. The primary research focus of the project is to develop dynamical system tools to study and analyze mixing and circulation processes in three-dimensional oceanic flows.
>
> I am also currently involved in the . . . The main focus of this research is to develop an integrated suite of models to accurately predict the transport of hydrocarbons in the ocean and atmosphere.

The petitioner established the intrinsic merit and national scope of his work. To meet the third prong of the *NYSDOT* national interest test, the petitioner quoted witness letters that he submitted with the petition.

Professor director of the at British Columbia, Canada, supervised the petitioner's doctoral program at that university. Prof. stated:

> [The petitioner] wrote a very good [master's] thesis on numerical methods for solving time-dependent partial differential equations – the ubiquitous tools for modeling dynamic problems in the physical and engineering sciences. This work was expanded considerably in his PhD work, where he investigated various mapping methods to solve image registration problems. [The petitioner] has developed very strong mathematical and computational skills which place him in a select group of people able to develop the necessary computer software for use in the medical community.
>
> He put these skills to great use as a researcher at the well-known Furthermore his passion for teaching mathematics and computation, and his desire to transmit this passion and understanding to others,

> provided the bedrock to train a host of students in areas of engineering computation which are absolutely invaluable for the American research and development efforts. [The petitioner's] expertise has broadened much further over the past two years at the Specifically, he has become adept at oceanographic modeling, a cornerstone of our efforts to model global climate change and weather prediction. . . .
>
> [The petitioner] has singular skills to contribute to the solution of many of the technical problems facing American industry. The potential is great that he will make noteworthy contributions in areas as diverse as medical imaging for automated surgical procedures, modeling of ocean currents and weather changes, and the development of new clean energy sources.

The petitioner was a visiting assistant professor at Massachusetts, from 2009 to 2011. Dr. associate professor at stated:

> During those two years, I was the Associate Head and was responsible for overseeing the academic operations of the [Mathematical Sciences] department. . . .
>
> At [the petitioner] taught several undergraduate courses and a graduate course in engineering mathematics. I found him to be an extremely diligent and hardworking instructor and his students at held him in good regard. . . .
>
> [The petitioner's] research has focused on the development and use of adaptive grids which are used to obtain approximate solutions of partial differential equations which describe various physical phenomena. His current work at the employs computational and theoretical mathematics models to understand, identify, and analyze the coherent structures that exist in the flow patterns of oceans so that one may understand their relationship to ocean mixing. [The petitioner] is part of a research team that will develop such predictive models which can be used to help figure out how oil spilled in the ocean evolves over time and where it goes, so that an efficient and effective response can be planned and implemented.

Professor stated:

> The decision to hire [the petitioner] was based on interviews, recommendations from his PhD committee, and our assessment of his refereed publications. Our expectation was that his training and research in applied mathematics would be an important skill set and a unique contribution to these programs. His performance during the past year has exceeded our expectations. During this time he has developed special computer codes for analyzing both model and observational data on ocean motions. He has presented his results at several scientific meetings and is the lead author . . . on ten refereed publications. This is an exceptional rate of publication for someone at an

early career stage. Even more noteworthy is the fact that these publications span three disciplines: applied mathematics, applied physics, and physical oceanography.

Dr. , research associate professor at , praised the petitioner's "impressive publication record" and called him "a valuable, accomplished scientist with a broad international background and active involvement in two large multi-institutional research efforts."

Professor Japan, stated that the petitioner's "work is not only the top-notch in theoretical, computational, and technological [*sic*], but also is unique, original and innovative, or challenging, by contributing a breakthrough to the traditional scientific realm." Prof. did not identify the "breakthrough."

Many of the witnesses also praised the petitioner's personality and communications skills, and asserted that his background as a native of Sudan who studied in China afforded him a rare multi-cultural perspective.

More than one witness asserted that the beneficiary was the lead author of nine refereed articles (ten, counting a draft that was under review as of the filing date). The petitioner's own *curriculum vitae* listed 10 articles (seven published, one "in progress," one "submitted" and one "accepted") and 12 conference presentations. The petitioner submitted copies of five published articles, the aforementioned draft, and seven abstracts of conference presentations. The petitioner was the sole or lead author of all the articles, and five of the seven submitted presentations.

The director issued a request for evidence (RFE), stating: "The petitioner must establish . . . a past record of specific prior achievement with some degree of influence on the field as a whole." The director acknowledged the petitioner's submission of many of his claimed publications, but stated that "[a] check of [an unidentified] search engine . . . reveals only two of the petitioner's articles have ever been officially cited, those drawing a combined seven citations. However, three are self-citations, which leaves a total of four." The director further noted that three of the four citations "are in articles written by which does not indicate the petitioner's articles have drawn a wide range of attention." The director stated that, given the lack of objective evidence of the impact of the petitioner's published work, "the petitioner must establish that [his] skills or background are unique and innovative and serve the national interest."

In response, counsel stated that the petitioner had already submitted evidence requested in the RFE, in the form of witness letters quoted previously. The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have received consideration above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as above, evaluate the content of those letters as to whether they support the alien's eligibility. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). The letters submitted with the petition established that university faculty members who have worked with the petitioner hold him in high personal regard and believe he has a promising future. The letters did not establish specific contributions by which the petitioner has influenced his field. In this case, the evidence and statements from the universities where the petitioner has worked and studied do not establish first-hand that his work has had an impact outside of those universities.

Counsel asserted that the director's reliance on citations "applies a simple formula to a complex idea. Other fields may have more people working in them and more articles written. . . . Self citation is not necessarily to be disregarded, either." The director did not take issue with the number of articles that the petitioner had written, but rather with the number of times that other researchers had taken notice of the petitioner's work. The petitioner's self-citation does not show that the petitioner's work has influenced others. It shows, instead, that the petitioner continues to build on his own previous work.

Quoting Dr. s assertion that the petitioner had "an impressive publication record for a young scientist," counsel stated: "the apparent 'lack of citations' is attributable to [the petitioner's] age." Counsel did not explain how this conclusion followed from Dr. s letter. The petitioner's earliest published work appeared in 2000, more than a decade before the petition's filing date. The petitioner's 2012 draft manuscript contains several citations to articles published in 2012, indicating that there need not be a significant time lag between publication and citation.

Counsel stated that the RFE response included "evidence . . . [that] shows that there are in fact 15 citations, not just 4." The petitioner submitted a printout from the Google Scholar search engine showing a total of 15 citations of six papers, with the most-cited article showing five citations. This printout did not identify the citing articles. A second printout from Google Scholar identified two citations of the petitioner's article The two citing articles are, in fact, versions of the same article in two different languages (English and German), indicating that the automated function that aggregates citation data accidentally counted the same citation twice.

Counsel stated:

> The field of adaptive grid methods is an advanced field with relatively few professors qualified to advance it. [The petitioner's] research has been cited by Professor who is internationally known in the field. Professor has also cited [the petitioner's] work, and Dr. is also well known internationally in this field. Thus [the petitioner's] work has attracted interest at [*sic*] those in the highest level of the field.

The record contains no evidence to support the claim that Prof. and Prof. represent "the highest level of the field." The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

To support the above claims, the petitioner submitted a letter from Prof. (discussed below) and another printout from Google Scholar, listing the petitioner's unpublished doctoral dissertation and three papers that cite it. All three of the citing articles identify as a co-author, meaning that Dr. (a member of the faculty) has collaborated with the petitioner and, separately, with s familiarity with the petitioner's unpublished work does not indicate wider impact beyond

Furthermore, following links available through Google Scholar reveals that the original versions of the article, submitted February 26, 2008, contained no citations to the petitioner's work.[2] A citation was added to the final version, accepted for publication May 4, 2009. There are no substantive differences between the "Abstract" or "Conclusions" sections of the two versions, indicating that the petitioner's work did not alter the basic findings that were already in place before the addition of the citation.

Turning to the newly submitted letters, Professor stated:

> I have known [the petitioner] since 2001 when he began his graduate studies in Mathematics at Canada while I have been a frequent visitor to the Mathematics Department. Although I have not directly worked with [the petitioner], I have followed closely his research work particularly on the equation since studying the equation is one area of my recent research interest. . . . [The petitioner] has developed a novel algorithm for efficient numerical solution of the equation and obtained various in-depth mathematical understandings such as the convergence and regularity of the numerical solution. He has also studied the application of the equation together with his algorithm to image registration in image processing and mesh adaptation for use in

[2] 2008 version: 2009 version: Partial copies of both versions added to record September 12, 2013.

> the numerical solution of partial differential equations. All these studies demonstrated that the developed algorithm is effective and reliable.
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> [The petitioner] has produced high quality work and made very valuable contributions to his research area. I expect that he will continue to produce high quality research work and be a successful researcher in [the] future.

Dr. associate professor at Canada, stated:

> I have not directly worked with [the petitioner], however I am quite aware of his fundamental work in the area of the numerical solution of partial differential equations. . . . [The petitioner] is an expert on adaptive grid generation – a technique which allows one to speed up simulations by focusing the computational effort in specific regions of space (and time). . . .
>
> My research group is particularly interested in [the petitioner's] adaptive grid technique based on optimal mass transport. We plan to apply a domain decomposition strategy to map this optimal mass transport approach to a many core environment. . . .
>
> Only 4 years removed from completing his PhD, [the petitioner] has established [a] great research record. . . . I believe that [the petitioner] has laid the groundwork for a successful research career, one with wide ranging benefits to the numerical analysis community and of immense practical interest to other scientists and engineers in your country and the international community.

The above witnesses expressed interest in the petitioner's work, and credited him with developing an "effective and reliable" algorithm relating to the equation. They did not, however, indicate that this contribution distinguished the petitioner from other active researchers in his specialty. Instead, they indicated that his work so far points to a productive future in the field.

The director denied the petition on March 6, 2013. The director quoted several witness letters and stated that those letters did not demonstrate that any specific contribution by the petitioner warranted approval of the waiver. The director stated that the record lacked objective evidence to corroborate the witnesses' claims, and that the witnesses discussed the petitioner's future potential rather than existing influence. The director acknowledged the petitioner's submission of citation data from Google Scholar, but found that, as before, the majority of the citations are self-citations, leaving "no more than four citations" from other researchers.

On appeal, counsel claims: "it appeared that the service center director had reviewed the documents submitted in the first submission, but made no mention of the documents responding to the . . . Request for Evidence." The director, however, specifically mentioned the Google Scholar printout

that the petitioner had submitted in response to the RFE, and discussed the submitted citation data at some length. Counsel effectively acknowledged as much, stating that the director placed too much emphasis on citation numbers. The director's decision fills about four and half pages of text. The discussion of citations accounts for about half a page.

Counsel contends that there are relatively few workers in the petitioner's specialty, and that his articles are too recent to have yielded many citations. The unsupported assertions of counsel are not evidence. *See Matter of Obaigbena*, 19 I&N Dec. 534 n.2. Counsel contends that the petitioner has offered an "explanation for the lower number of publications and the relatively lower number of citations which would naturally follow." The petitioner has not established that the number of his publications would affect the number of citations per article. The assertion that the petitioner's articles will eventually see wider citation is speculation.

Furthermore, the director did not state, either in the RFE or in the denial notice, that the lack of independent citation required the denial of the petition. Rather, the director stated that, in the absence of strong citation evidence, other evidence would be necessary to establish eligibility.

Counsel contends that the director "makes too much of the concept of self-citation," and that the petitioner's self-citations are not "merely self-serving." The director brought up the issue only because self-citation cannot show that the petitioner's work has attracted significant attention from other researchers. Therefore, if the petitioner seeks to establish eligibility based on citation rates, it is reasonable to exclude self-citations from the citation count.

Counsel asserts that the director selectively quoted from the witness letters, failing to take into account assertions regarding the petitioner's personality and character. Counsel does not explain why these factors should have any weight with regard to the national interest waiver. The petitioner's stated ability to hold the attention of students is useful in a classroom setting, but it is not in such a setting that the petitioner's efforts would have a broad (rather than local) impact. Cf. *NYSDOT*, 22 I&N Dec. 217 n.3 (in some settings, such as an attorney representing an individual client or a teacher in a classroom, professional work has intrinsic merit but lacks national scope). Counsel also stresses the petitioner's "multicultural training and educational experiences in the Sudan, China, Canada and the United States." Counsel states: "this kind of varied experience is of great value to the national interest and will have substantially greater effect than would the experiences of those who have remained in one country throughout their careers." Counsel fails to support the claim that mathematicians with international experience tend to be more productive or influential than those who remain in their home countries.

Counsel asserts that the director did not consider Dr. s statement that the petitioner has "unique experience with complex moving mesh and optimal transport techniques." Counsel contends that such experience is "obviously something that can contribute to the national interest in a way that no one else can." Dr. 's statement speaks to the high degree of specialization in the petitioner's field, but does not establish that the petitioner has already had impact and influence on his field upon which he will prospectively continue to build.

Counsel disputes the relative weight that the director gave to different elements of the record, but counsel does not refute the director's finding that the record does not contain objective, documentary evidence to support witnesses' claims regarding the importance of the petitioner's work.

Counsel states that the petitioner "was asked to present his work at an international conference, showing his work to be of international interest." The record does not show how the petitioner came to present his work at the conference – *i.e.*, whether conference organizers solicited a presentation from him, or issued an open call for manuscripts, from which the organizers selected his work. Furthermore, the record does not indicate that conference presentations are an unusual privilege extended only to particularly well-regarded researchers. The petitioner's *curriculum vitae* shows more presentations than articles. Such presentations are, like journal articles, a means of disseminating one's research findings. As such, presentations provide a venue for potential influence, rather than evidence of influence in their own right.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. The underlying immigrant classification requires substantial prospective benefit, and therefore assertions of potential future benefit do not establish eligibility for the added benefit of the waiver. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The AAO will dismiss the appeal for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.